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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RITO LOPEZ, on behalf of himself  
and the putative Class members;

Plaintiff,

vs.

EUROFINS SCIENTIFIC, INC.,  
ENVIRONMENTAL SAMPLING  
SUPPLY, INC., TESTAMERICA  
LABORATORIES, INC., and DOES  
1-100, inclusive;

Defendants,

Case No. 3:21-cv-08652

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Pay for All Hours Worked  
(Labor Code § 204, 256, and 225.5);
- (2) Failure to Pay Minimum Wages (Labor  
Code §§ 558, 1182.11, 1182.12, 1194,  
1197, 1197.1 and 1198);
- (3) Failure to Pay Overtime Wages (Labor  
Code § 510);
- (4) Failure to Provide Timely and Accurate  
Itemized Wage Statements and Records  
(Labor Code § 226, 226.3 226.6, 432,  
1174, 1198.5, and 2810.5);
- (5) Unlawful Business Practices (Cal. Bus.  
& Prof. Code §§ 17200 *et seq.*);
- (6) Failure to Authorize and Permit and/or  
Make Available Meal and Rest Periods  
(Labor Code §§ 226.7 and 512 ; IWC  
Wage Order 4-2001) ;
- (7) Failure to Timely Pay Wages During  
Employment (Labor Code § 204);
- (8) Failure to Timely Pay Wages at  
Termination/Waiting Time Penalties

Pursuant to Labor Code §§ 201, 202,  
and 203  
(9) Penalties Pursuant to Labor Code §  
2699(a), (f)

**DEMAND FOR JURY TRIAL**

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## **INTRODUCTION**

1  
2 1. Plaintiff Rito Lopez (“Plaintiff”) brings this action on behalf of himself  
3 and other similarly situated individuals against Eurofins Scientific, Inc. (“Eurofins”),  
4 Environmental Sampling Supply, Inc. (“ESS”), and TestAmerica Laboratories, Inc.  
5 (“TestAmerica”) (collectively “Defendants”), for violations of California wage and  
6 hour laws.

7 2. This action stems from Defendants’ policies and practices of: (1) failing  
8 to compensate Plaintiff and putative Class members for all hours worked; (2) failing  
9 to pay Plaintiff and putative Class members minimum wage for all hours worked; (3)  
10 failing to pay Plaintiff and putative Class members overtime wages; (4) failing to  
11 provide Plaintiff and putative Class members true and accurate itemized wage  
12 statements and records; (5) engaging in unfair business practices; (6) failing to  
13 provide meal and rest breaks; (7) failure to timely pay wages during employment; (8)  
14 failure to timely pay wages at termination/waiting time penalties. Plaintiff also seeks  
15 penalties pursuant to California Labor Code §§ 2699(a) and (f) on behalf of  
16 Aggrieved Employees for the same policies and practices.

17 3. Plaintiff seeks damages, penalties, and interest to the full extent permitted  
18 by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage  
19 Orders, as well as other relief requested herein. Plaintiff, on behalf of the State of  
20 California, also seeks to recover penalties and reasonable attorneys’ fees for these  
21 violations pursuant to Sections 2699(a) and (f) of the California Labor Code Private  
22 Attorneys General Act (“PAGA”).

## **PARTIES**

23  
24 4. Plaintiff Rito Lopez is an individual over the age of eighteen, and at all  
25 times mentioned in this Complaint was a resident of the State of California.

26 5. Plaintiff is currently employed by Defendants for various projects as a  
27 packer. Plaintiff began employment with Defendants in January 1990. Plaintiff  
28 works for Defendants in Oakland, California.

1           6. Plaintiff is informed, believes, and thereon alleges that Eurofins is a  
2 Delaware corporation headquartered in Des Moines, Iowa. Eurofins is registered to  
3 do business in California, does business in California and employs and/or employed  
4 hourly, non-exempt employees, including Plaintiff and the putative Class members  
5 in California. Eurofins may be served with process by serving its registered agent,  
6 Cogency Global, Inc., 1325 J Street, Suite 1550, Sacramento, California 95814.

7           7. Plaintiff is informed, believes, and thereon alleges that ESS is a Delaware  
8 corporation headquartered in San Leandro, California. ESS is registered to do  
9 business in California, does business in California and employs and/or employed  
10 hourly, non-exempt employees, including Plaintiff and Aggrieved Employees in  
11 California. ESS may be served with process by serving its registered agent, Cogency  
12 Global, Inc., 1325 J Street, Suite 1550, Sacramento, California 95814.

13           8. Plaintiff is informed, believes, and thereon alleges that TestAmerica is a  
14 Delaware corporation headquartered in North Canton, Ohio. TestAmerica is  
15 registered to do business in California, does business in California and employs  
16 and/or employed hourly, non-exempt employees, including Plaintiff and Aggrieved  
17 Employees in California. TestAmerica may be served with process by serving its  
18 registered agent, Cogency Global, Inc., 1325 J Street, Suite 1550, Sacramento,  
19 California 95814.

20           9. Defendants employ and/or employed Plaintiff and putative Class  
21 members because Defendants, directly or indirectly, control the employment terms,  
22 pay practices, timekeeping practices, and daily work of Plaintiff and putative Class  
23 members. Putative Class members employed since October 25, 2020 are also  
24 Aggrieved Employees.

25           10. Plaintiff is informed, believes, and thereon alleges that each and every  
26 one of the acts and omission alleged herein were performed by, and/or attributable  
27 to, Defendants, each acting as agents and/or employees, and/or under the direction  
28 and control of each of the other, and that said acts and failures to act were within the

1 course and scope of said agency, employment and/or direction and control.

2 11. At all material times, Defendants have done business under the laws of  
3 California, have had places of business in California, including in this judicial district,  
4 and have employed putative Class members in this District and elsewhere throughout  
5 California. Defendants are “persons” as defined in Labor Code § 18 and an  
6 “employer” as that term is used in the Labor Code, the IWC Wage Orders regulating  
7 wages, hours, and working conditions, and the California Business and Professions  
8 Code § 17201.

9 **JURISDICTION AND VENUE**

10 12. This Court has original federal jurisdiction under 28 U.S.C. § 1332.  
11 Plaintiff seeks damages in an amount that exceeds \$75,000.00 and the matter in  
12 controversy is between citizens of different States. This Court has supplemental  
13 jurisdiction over Plaintiff’s California state law claims under 28 U.S.C. § 1367(a)  
14 because they are so related to this action that they form part of the same case or  
15 controversy.

16 13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).  
17 Plaintiff was employed in this District and the claims asserted arose in this District.  
18 At all material times Defendants have been actively conducting business in the State  
19 of California and within the geographic area encompassing the Northern District of  
20 the State of California.

21 **FACTUAL ALLEGATIONS**

22 14. Eurofins provides a range of analytical testing services to clients across  
23 multiple industries. Eurofins is one of the global leaders in food, environmental,  
24 pharmaceutical, and cosmetic products testing and in AgroSciences Contract  
25 Research Organization (“CRO”) services. On information and belief, Eurofins has  
26 over 12,000 employees and operated approximately 80 locations throughout the  
27 United States, including the state of California. Plaintiff is informed, believes, and  
28 thereon alleges that Eurofins employs hundreds of hourly, non-exempt workers

1 similarly situated to Plaintiff in California.

2 15. ESS manufactures quality TOC Vials, EPA Vials, VOAS and many  
3 products for environmental sampling and analysis. Plaintiff is informed, believes, and  
4 thereon alleges that ESS employs hundreds of hourly, non-exempt workers similarly  
5 situated to Plaintiff in California

6 16. TestAmerica is a leading analytical laboratory for environmental testing  
7 services in the United States. Plaintiff is informed, believes, and thereon alleges that  
8 TestAmerica employs hundreds of hourly, non-exempt workers similarly situated to  
9 Plaintiff in California.

10 17. Plaintiff works for Defendants as a packer in Oakland, California.  
11 Plaintiff began employment with Defendants in January 1990. Plaintiff is classified  
12 as an hourly, non-exempt employee and is paid an hourly rate of approximately  
13 \$16.52.

14 18. Plaintiff is informed, believes, and thereon alleges that Defendants  
15 employ and have employed hundreds of hourly, non-exempt workers similarly  
16 situated to Plaintiff in California, including but not limited to packers, warehouse  
17 assistants, sample receiving – shipping technicians and other employees with similar  
18 job duties.

19 19. Although Plaintiff's shifts may vary in length, Plaintiff usually worked  
20 eight (8) hours or more per shift, five (5) shifts per week. Plaintiff works  
21 approximately forty (40) hours per week, or more.

22 20. Defendants routinely fail to pay compensation to Plaintiff and putative  
23 Class members, including requiring them to perform substantial work off-the-clock  
24 and without compensation for any and all tasks performed under the control of the  
25 employer (e.g. COVID-related tasks, among other things), and failing to pay for all  
26 hours worked, minimum wage, overtime, and premiums at the appropriate rates of  
27 pay. This includes but is not limited to Defendants requiring Plaintiff and putative  
28 Class members to wait in line, to go through temperature checks and to answer

1 COVID-19 screening questionnaires prior clocking in for the start of their shift. It  
2 takes Plaintiff and putative Class members at least one minute and often longer to go  
3 through the line, to undergo such temperature checks, and to answer the COVID-19  
4 screening questionnaires *before* the beginning of each shift. This time spent in  
5 temperature check lines, undergoing temperature checks, answering COVID-19  
6 screening questionnaires or completing any other COVID-19 related tasks goes  
7 unrecorded and therefore uncompensated.

8         21. Defendants routinely fail to authorize, permit and/or make available  
9 compliant, lawful meal periods and/or rest breaks to Plaintiff and putative Class  
10 members. On average, Plaintiff and putative class members missed one rest break  
11 per week. Plaintiff and putative class members were denied lawful meal breaks daily.  
12 Plaintiff experienced issues in his employment with Defendants, including  
13 Defendants' failure to pay wages owed, failure to allow me to take complete meal  
14 periods, rest periods, failure to provide accurate wage statements. Further,  
15 Defendants failed to pay the meal and rest period premiums. In addition, Defendants  
16 require Plaintiff and putative Class members to wait in line in order to clock out and  
17 back in upon returning from their meal breaks. Plaintiff and putative Class members  
18 spend at least two additional minutes waiting in line after their meal breaks to clock  
19 back in for their afternoon shift. This time spent in line interrupted their meal break  
20 and also goes unrecorded and therefore uncompensated.

21         22. As a result of these policies and/or practices, Plaintiff and putative Class  
22 members are denied compensation for all hours worked, minimum wages, overtime,  
23 and premiums at the appropriate rates of pay, which they are lawfully owed resulting  
24 from the additional off-the-clock work in excess of eight (8) hours per day and forty  
25 (40) hours per week.

26         23. Plaintiff and putative Class members are also denied complete and  
27 compliant meal and rest breaks. For example, due to the obligations placed upon them  
28 by Defendants, the rounded meal period punches, the automatically deducted meal



1 periods, and a failure to properly record the actual meal periods provided, Plaintiff  
2 and putative Class members are unable to take complete, timely, compliant, and  
3 lawful meal and/or rest breaks and have not received compliant premium payments  
4 at the appropriate rate of pay.

5 24. Plaintiff is informed, believes, and thereon alleges that Defendants utilize  
6 and apply these “temperature check” and “COVID-19 screening” protocols, policies  
7 and practices across all Defendants’ facilities throughout California.

8 25. Further, Plaintiff is informed, believes, and thereon alleges that  
9 Defendants institute a similar policy of not compensating employees while waiting  
10 in line to clock in after their meal breaks across all Defendants’ facilities throughout  
11 California.

12 26. Plaintiff is informed, believes, and thereon alleges that Defendants utilize  
13 the same or substantially similar timekeeping mechanisms throughout all their  
14 facilities in California.

15 27. Defendants’ common course of wage-and-hour abuse also includes  
16 routinely failing to maintain and timely provide true and accurate pay records,  
17 personnel records, and records of the hours worked by Plaintiff and putative Class  
18 members.

19 28. As a result of the aforementioned violations, Plaintiff and Putative Class  
20 members are provided with untrue, non-compliant, improperly maintained, untimely,  
21 and inaccurate wage statements as such statements do not include payment for all  
22 hours worked, including appropriate rates of pay, minimum wages, and overtime, and  
23 do not accurately reflect gross wages earned, total hours worked, the number of  
24 piece-rate units earned and any applicable piece rate, all deductions, net wages  
25 earned, the inclusive dates of the pay period, Plaintiff and putative Class members’  
26 names and only the last four digits of their social security number or an employee  
27 identification number other than a social security number, the name and address of  
28 the legal entity that is the employer, and all applicable hourly rates in effect during



1 the pay period and the corresponding number of hours worked at each hourly rate by  
2 the employee.

3 29. Putative Class members are employed by Defendants and performed  
4 work materially similar to Plaintiff.

5 30. Putative Class members report to facilities owned, operated, or managed  
6 by Defendants to perform their jobs.

7 31. Putative Class members perform their jobs under Defendants'  
8 supervision using materials and technology approved and supplied by Defendants.

9 32. Putative Class members are required to follow and abide by Defendants'  
10 common work, time, and pay policies and procedures in the performance of their  
11 jobs.

12 33. At the end of each pay period, putative Class members receive wages  
13 from Defendants that are determined by common systems and methods that  
14 Defendants select and control.

15 34. Defendants pay putative Class members on an hourly rate basis.

16 35. Defendants' method of paying Plaintiff and putative Class members is  
17 willful and not based on a good faith and reasonable belief that their conduct  
18 complied with California law.

19 36. Defendants' unlawful conduct has been widespread, repeated, and  
20 consistent throughout Defendants' California facilities.

21 37. Defendants know or should know that their policies and practices are  
22 unlawful and unfair.

23 38. Defendants' conduct is willful, carried out in bad faith, and causes  
24 significant damages to non-exempt hourly employees in an amount to be determined  
25 at trial.

26 39. Plaintiff provided notice to the LWDA and Defendants of his intent to  
27 pursue penalties on behalf of Aggrieved Employees pursuant to California Labor  
28 Code § 2698, et seq. ("PAGA") on October 25, 2021. Plaintiff provided amended

1 notices on February 7, 2022, October 5, 2022, and [ ]. Plaintiff has received no notice  
 2 from the LWDA within the required time period of its intent to pursue the claims in  
 3 Plaintiff's notice. Therefore, Plaintiff has completed all administrative prerequisites  
 4 to bringing claims pursuant to PAGA on behalf of himself and Aggrieved Employees.

### 5 **RULE 23 CLASS ACTION ALLEGATIONS**

6 40. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
 7 fully set forth herein.

8 41. Plaintiff brings this case as a class action on behalf of himself and all  
 9 others similarly situated pursuant to Federal Rule of Civil Procedure 23. The putative  
 10 Class that Plaintiff seeks to represent is defined as follows:

11 **All current and former hourly, non-exempt employees of**  
 12 **Eurofins Scientific, Inc., Environmental Sampling**  
 13 **Supply, Inc., and TestAmerica Laboratories, Inc.**  
 14 **throughout California during the time period starting**  
 15 **four years prior to the filing of this Complaint until the**  
 16 **resolution of this action ("the putative Class").**

17 42. This action has been brought and may properly be maintained as a class  
 18 action under Rule 23 because there is a well-defined community of interest in the  
 19 litigation and the putative class is easily ascertainable.

20 a. **Numerosity:** The potential members of the putative Class as defined are  
 21 so numerous that joinder of all the members of the putative Class is  
 22 impracticable.

23 b. **Commonality:** There are questions of law and fact common to Plaintiff  
 24 and the putative Class that predominate over any questions affecting only  
 25 individual members of the putative Class. These common questions of  
 26 law and fact include, but are not limited to:

27 i. Whether Defendants fail to compensate putative Class  
 28

members for all hours worked, including at minimum wage and as overtime compensation, in violation of the Labor Code and Wage Orders;

- ii. Whether Defendants have a policy and/or practice of requiring putative Class members to be in the control of Defendants, spend time primarily for the benefit of Defendants, and work for Defendants off-the-clock and without compensation;
- iii. Whether Defendants fail to provide putative Class members with timely, accurate itemized wage statements in violation of the Labor Code and Wage Orders;
- iv. Whether Defendants violate Business and Professions Code §§ 17200 *et seq.*, by:

- 1. failing to compensate putative Class members for all hours worked, including at minimum wage and at overtime rate wage compensation;

- 2. failing to provide putative Class members with timely, accurate itemized wage statements; and

- v. The proper formula for calculating restitution, damages, and penalties owed to Plaintiff and the putative Class as alleged herein.

c. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Defendants' common course of conduct in violation of law as alleged herein has caused Plaintiff and putative Class members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

d. **Adequacy of Representation:** Plaintiff is a member of the putative Class, does not have any conflicts of interest with other putative Class members, and will prosecute the case vigorously on behalf of the putative

1 Class. Counsel representing Plaintiff is competent and experienced in  
2 litigating large employment class actions, including wage and hour cases.  
3 Plaintiff will fairly and adequately represent and protect the interests of  
4 the Class members.

- 5 e. **Superiority of Class Action:** A class action is superior to other available  
6 means for the fair and efficient adjudication of this controversy.  
7 Individual joinder of all putative Class members is not practicable, and  
8 questions of law and fact common to the putative Class predominate over  
9 any questions affecting only individual members of the putative Class.  
10 Each putative Class member has been damaged and is entitled to  
11 recovery by reason of Defendants' illegal policies and/or practices. Class  
12 action treatment will allow those similarly situated persons to litigate  
13 their claims in the manner that is most efficient and economical for the  
14 parties and the judicial system.

15 43. The putative Class may also be certified because the prosecution of  
16 separate actions by the individual members of the putative Class would create a risk  
17 of inconsistent or varying adjudication with respect to individual members of the  
18 putative Class, and, in turn, would establish incompatible standards of conduct for  
19 Defendants.

20 44. If each individual putative Class member were required to file an  
21 individual lawsuit, Defendants would necessarily gain an unconscionable advantage  
22 because Defendants would be able to exploit and overwhelm the limited resources of  
23 each member of the putative Class with Defendants' vastly superior financial legal  
24 resources.

25 45. Requiring each individual putative Class member to pursue an individual  
26 remedy would also discourage the assertion of lawful claims by the putative Class  
27 members who would be disinclined to pursue these claims against Defendants  
28 because of an appreciable and justifiable fear of retaliation and permanent damage

1 to their lives, careers, and well-being.

2 46. Plaintiff also seeks certification of the putative Class to the extent  
3 applicable under Federal Rule of Civil Procedure 23(b)(2) on the grounds that the  
4 party opposing the putative Class has acted or refused to act on grounds that apply  
5 generally to the putative Class, so that final injunctive relief or corresponding  
6 declaratory relief is appropriate respecting the putative Class as a whole.

### 7 **FIRST CAUSE OF ACTION**

#### 8 **Failure to Pay for All Hours Worked**

#### 9 **Pursuant to Labor Code §§ 204, 256, and 225.5**

#### 10 **(On Behalf of Plaintiff and Putative Class Against All Defendants)**

11 47. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
12 fully set forth herein.

13 48. Labor Code § 200(a) defines wages as “all amounts for labor performed  
14 by employees of every description, whether the amount is fixed or ascertained by the  
15 standard of time, task, piece, commission basis or other method of calculation.”

16 49. Labor Code § 204 provides that employers must compensate employees  
17 for all hours worked “twice during each calendar month, on days designated in  
18 advance by the employer as the regular paydays.”

19 50. Labor Code § 256 provides that the Labor Commissioner shall impose a  
20 civil penalty in an amount not exceeding 30 days pay as waiting time under the terms  
21 of Section 203” of the Labor Code.

22 51. Labor Code § 225.5 provides that “[i] n addition to, and entirely  
23 independent and apart from, any other penalty provided in this article, every person  
24 who unlawfully withholds wages due any employee in violation of Section 212, 216,  
25 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial  
26 violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For  
27 each subsequent violation, or any willful or intentional violation, two hundred dollars  
28 (\$200) for each failure to pay each employee, plus 25 percent of the amount

1 unlawfully withheld.”

2 52. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during  
3 which an employee is subject to the control of an employer and includes all the time  
4 the employee is suffered or permitted to work, whether or not required to do so.”

5 53. Labor Code § 1198 makes it unlawful for employers to employ  
6 employees under conditions that violate the Wage Orders.

7 54. Defendants willfully engaged in and continues to engage in a policy and  
8 practice of not compensating and paying premiums at the appropriate rate to Plaintiff  
9 and putative Class members for all hours worked or spent in Defendants’ control.

10 55. Defendants fail to pay Plaintiff and the putative Class Members  
11 compensation including but not limited to wages, minimum wages, straight time,  
12 overtime and/or premium pay at the appropriate rates and regularly require Plaintiff  
13 and putative Class members to complete additional work off-the-clock without  
14 compensation. Defendants did not compensate Plaintiff and the putative Class  
15 members for tasks under the control of the employer (e.g. COVID-related tasks,  
16 among other things), and failed to pay for all hours worked, minimum wage,  
17 overtime, and appropriate premium payments owed. For instance, and as mentioned  
18 above, Defendants instruct Plaintiff and putative Class members to wait in line, go  
19 through temperature checks, answer COVID-19 screening questionnaires *before* the  
20 beginning of each shift, *i.e.*, before clocking in. Additionally, Defendants require  
21 Plaintiff and putative Class members to wait in line in order to clock back in upon  
22 returning from their meal breaks. It takes Plaintiff and putative Class members at  
23 least one minute and often longer to go through the temperature check line, undergo  
24 such temperature check, and answer the COVID-19 screening questionnaires before  
25 their shift starts. It takes Plaintiff and Class members at least an additional two  
26 minutes to go through the line to clock back in after their meal break before their  
27 afternoon shift starts. Defendants do not record or compensate Plaintiff and putative  
28 Class members for their time spent in temperature check lines, undergoing

1 temperature checks, answering COVID-19 questionnaires, and waiting in line upon  
2 return from meal breaks or completing any other COVID-19 related tasks.

3 56. As a result, Defendants fail to track Plaintiff and putative Class members'  
4 actual hours worked, and consequently fail to pay Plaintiff and putative Class  
5 members for all hours worked.

6 57. Defendants require Plaintiff and putative Class members to work off-the-  
7 clock without compensation. In other words, Plaintiff and putative Class members  
8 are forced to perform work for the benefit of Defendants without pay.

9 58. In violation of California law, Defendants knowingly and willfully refuse  
10 to perform their obligations to provide Plaintiff and putative Class members with  
11 compensation for all time worked including paying minimum wage, overtime, and  
12 premiums at the appropriate rates. Defendants regularly fail to track and/or engage in  
13 the practice of rounding the time Plaintiff and putative Class members actually work  
14 and fail to compensate them for all hours worked including paying minimum wage,  
15 and overtime, and premiums at the appropriate rates

16 59. Therefore, Defendants committed, and continue to commit, the acts  
17 alleged herein knowingly and willfully, and in conscious disregard of the Plaintiff  
18 and putative Class members' rights. Plaintiff and putative Class members are thus  
19 entitled to recover nominal, actual, and compensatory damages, plus interest and  
20 including penalties, attorneys' fees, expenses, and costs of suit.

21 60. As a proximate result of the aforementioned violations, Plaintiff and  
22 putative Class members have been damaged in an amount according to proof at time  
23 of trial.

24 61. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
25 provided.

26 **SECOND CAUSE OF ACTION**  
27 **Failure to Pay Minimum Wages**  
28 **Pursuant to California Labor Code §§ 558, 1182.11, 1182.12, 1194, 1197, 1197.1**  
**and 1198**



**(On Behalf of Plaintiff and Putative Class Against All Defendants)**

62. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

63. During the applicable statutory period, California Labor Code §§ 1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and effect, and required that Defendants' hourly employees receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other basis, at the rate of ten dollars and fifty cents (\$10.50) per hour commencing January 1, 2017; at the rate of eleven dollars (\$11.00) per hour commencing January 1, 2018; at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; at the rate of thirteen dollars (\$13.00) per hour commencing January 1, 2020; at the rate of fourteen dollars (\$14.00) commencing January 1, 2021; and at the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

64. Labor Code § 1197.1 provides, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages

1 pursuant to Section 1194.2, and any applicable penalties  
2 imposed pursuant to Section 203. (3) Wages, liquidated  
3 damages, and any applicable penalties imposed pursuant to  
4 Section 203, recovered pursuant to this section shall be paid  
5 to the affected employee.

65. California Labor Code §1194 states:

6 Notwithstanding any agreement to work for a lesser wage,  
7 any employee receiving less than the legal minimum wage or  
8 the legal overtime compensation applicable to the employee  
9 is entitled to recover in a civil action the unpaid balance of the  
10 full amount of this minimum wage or overtime compensation,  
11 including interest thereon, reasonable attorney's fees, and  
12 costs of suit.

66. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during  
12 which an employee is subject to the control of an employer and includes all the time  
13 the employee is suffered or permitted to work, whether or not required to do so.”

67. Labor Code § 558 provides in relevant part:

15 (a) Any employer or other person acting on behalf of an  
16 employer who violates, or causes to be violated, a section of  
17 this chapter or any provision regulating hours and days of  
18 work in any order of the Industrial Welfare Commission  
19 shall be subject to a civil penalty as follows: (1) For any  
20 initial violation, fifty dollars (\$50) for each underpaid  
21 employee for each pay period for which the employee was  
22 underpaid in addition to an amount sufficient to recover  
23 underpaid wages. (2) For each subsequent violation, one  
24 hundred dollars (\$100) for each underpaid employee for each  
25 pay period for which the employee was underpaid in addition  
26 to an amount sufficient to recover underpaid wages.

68. Labor Code § 1198 makes it unlawful for employers to employ  
24 employees under conditions that violate the Wage Orders.

69. Labor Code §1194.2 provides that, in any action under Section 1194 to  
26 recover wages because of the payment of a wage less than minimum wage fixed by  
27 an order of the commission, an employee shall be entitled to recover liquidated  
28

1 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

2 70. Defendants have maintained policies and procedures which create a  
3 working environment where hourly employees are routinely compensated at a rate  
4 that is less than the statutory minimum wage. Plaintiff and putative Class members  
5 routinely work time off-the-clock *i.e.*, before clocking in, without compensation for  
6 this time and are not paid minimum wage at the appropriate rate of pay. For instance,  
7 Plaintiff and putative Class members are not compensated minimum wage at the  
8 appropriate rate of pay for time spent waiting in temperature check lines, undergoing  
9 temperature checks, answering COVID-19 screening questionnaires, and waiting in  
10 line to clock back in upon returning from their meal breaks.

11 71. As a direct and proximate result of the unlawful acts and/or omissions of  
12 Defendants, Plaintiff and putative Class members have been deprived of minimum  
13 wages in an amount to be determined at trial, and are entitled to a recovery of such  
14 amount, plus liquidated damages, plus interest thereon, attorneys' fees, and costs of  
15 suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

16 72. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
17 provided.

18 **THIRD CAUSE OF ACTION**  
19 **Failure to Pay Overtime Wages**  
20 **Pursuant to Labor Code § 510**

21 **(On Behalf of Plaintiff and Putative Class Against All Defendants)**

22 73. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
23 fully set forth herein.

24 74. Defendants do not compensate Plaintiff and putative Class members with  
25 the appropriate overtime rate, as required by California law.

26 75. Labor Code § 510 provides, in pertinent part, that:

27 Eight hours of labor constitutes a day's work. Any work in  
28 excess of eight hours in one workday and any work in excess  
of 40 hours in any one workweek and the first eight hours  
worked on the seventh day of work in any one workweek shall

be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

76. The IWC Wage Order 4-2001(3)(A)(1) state:

The following overtime provisions are applicable ... employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: . . . One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and ... [d]ouble the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

77. Labor Code § 1194(a) provides that:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

78. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All

1 such wages are subject to California's overtime requirements, including those set  
2 forth above.

3 79. Defendants regularly do not compensate Plaintiff and putative Class  
4 members for their overtime hours worked and premiums the appropriate rate of pay.  
5 For instance, Plaintiff and putative Class members do not receive overtime  
6 compensation for time spent waiting in temperature check lines, undergoing  
7 temperature checks, answering COVID-19 screening questionnaires, and waiting in  
8 line to clock back in upon returning from their meal breaks, when the hours worked  
9 are in excess of eight (8) hours per day and forty (40) hours per week.

10 80. Plaintiff and putative Class members work overtime hours for  
11 Defendants without being paid overtime premiums at the appropriate rate of pay in  
12 violation of the Labor Code, applicable IWC Wage Orders, and other applicable law.

13 81. Defendants have knowingly and willfully refused to perform their  
14 obligation to provide Plaintiff and putative Class members with premium wages for  
15 all overtime work. As a proximate result of the aforementioned violations,  
16 Defendants have damaged Plaintiff and putative Class members in amounts to be  
17 determined according to proof at time of trial.

18 82. Defendants are liable to Plaintiff and putative Class members alleged  
19 herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore,  
20 Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

21 83. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
22 provided.

#### 23 **FOURTH CAUSE OF ACTION**

#### 24 **Failure to Provide Accurate Itemized Wage Statements and Records** 25 **Pursuant to Labor Code §§ 226, 226.3, 226.6, 432, 1174, 1198.5, and 2810.5** 26 **(On Behalf of Plaintiff and Putative Class Against All Defendants)**

27 84. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
28 fully set forth herein.

85. Defendants do not provide Plaintiff and putative Class members with

1 accurate itemized wage statements as required by California law.

2 86. Labor Code § 226(a) provides that:

3 Every employer shall, semimonthly or at the time of each  
 4 payment of wages, furnish each of his or her employees,  
 5 either as a detachable part of the check, draft, or voucher  
 6 paying the employee's wages, or separately when wages are  
 7 paid by personal check or cash, an accurate itemized  
 8 statement in writing showing (1) gross wages earned, (2) total  
 9 hours worked by the employee, except for any employee  
 10 whose compensation is solely based on a salary and who is  
 11 exempt from payment of overtime under subdivision (a) of  
 12 Section 515 or any applicable order of the Industrial Welfare  
 13 Commission, (3) the number of piece-rate units earned and  
 14 any applicable piece rate if the employee is paid on a piece-  
 15 rate basis, (4) all deductions, provided that all deductions  
 16 made on written orders of the employee may be aggregated  
 17 and shown as one item, (5) net wages earned, (6) the inclusive  
 18 dates of the period for which the employee is paid, (7) the  
 19 name of the employee and his or her social security number,  
 20 (8) the name and address of the legal entity that is the  
 21 employer, and (9) all applicable hourly rates in effect during  
 the pay period and the corresponding number of hours worked  
 at each hourly rate by the employee. The deductions made  
 from payments of wages shall be recorded in ink or other  
 indelible form, properly dated, showing the month, day, and  
 year, and a copy of the statement or a record of the deductions  
 shall be kept on file by the employer for at least four years at  
 the place of employment or at a central location within the  
 State of California.

22 87. The IWC Wage Orders also establishes this requirement. (See IWC  
 23 Wage Order 4-2001(7).

24 88. Labor Code § 226.3 provides, in relevant part:

25 Any employer who violates subdivision (a) of Section 226  
 26 shall be subject to a civil penalty in the amount of two  
 27 hundred fifty dollars (\$250) per employee per violation in an  
 28 initial citation and one thousand dollars (\$1,000) per  
 employee for each violation in a subsequent citation, for



1 which the employer fails to provide the employee a wage  
2 deduction statement or fails to keep the records required in  
subdivision (a) of Section 226.

3 89. Labor Code 226.6 provides, in relevant part:

4 Any employer who knowingly and intentionally violates the  
5 provisions of Section 226, or any officer, agent, employee,  
6 fiduciary, or other person who has the control, receipt,  
7 custody, or disposal of, or pays, the wages due any employee,  
8 and who knowingly and intentionally participates or aids in  
the violation of any provision of Section 226 is guilty of a  
9 misdemeanor and, upon conviction thereof, shall be fined not  
10 more than one thousand dollars (\$1,000) or be imprisoned  
not to exceed one year, or both, at the discretion of the court.

11 90. Labor Code § 226(e) provides:

12 An employee suffering injury as a result of a knowing and  
13 intentional failure by an employer to comply with subdivision  
14 (a) is entitled to recover the greater of all actual damages or  
fifty dollars (\$50) for the initial pay period in which a  
15 violation occurs and one hundred dollars (\$100) per employee  
16 for each violation in a subsequent pay period, not exceeding  
an aggregate penalty of four thousand dollars (\$4,000) and is  
17 entitled to an award of costs and reasonable attorney's fees.

18 91. Labor Code § 432 provides that "[i]f an employee or applicant signs any  
19 instrument relating to the obtaining or holding of employment, he shall be given a  
20 copy of the instrument upon request."

21 92. Labor Code § 1174(d) provides that employers shall "[k]eep, at a central  
22 location in the state or at the plants or establishments at which employees are  
23 employed, payroll records showing the hours worked daily by and the wages paid to,  
24 and the number of piece-rate units earned by and any applicable piece rate paid to,  
25 employees employed at the respective plants or establishments. These records shall  
26 be kept in accordance with rules established for this purpose by the commission, but  
27 in any case shall be kept on file for not less than three years. An employer shall not  
28 prohibit an employee from maintaining a personal record of hours worked, or, if paid



1 on a piece-rate basis, piece-rate units earned.”

2 93. Labor Code § 1198.5(b)(1) provides that an

3  
4 employer shall make the contents of those personnel records  
5 available for inspection to the current or former employee, or  
6 his or her representative, at reasonable intervals and at  
7 reasonable times, but not later than 30 calendar days from the  
8 date the employer receives a written request, unless the  
9 current or former employee, or his or her representative, and  
10 the employer agree in writing to a date beyond 30 calendar  
11 days to inspect the records, and the agreed-upon date does  
12 not exceed 35 calendar days from the employer's receipt of  
13 the written request. Upon a written request from a current or  
14 former employee, or his or her representative, the employer  
15 shall also provide a copy of the personnel records, at a charge  
16 not to exceed the actual cost of reproduction, not later than  
17 30 calendar days from the date the employer receives the  
18 request, unless the current or former employee, or his or her  
19 representative, and the employer agree in writing to a date  
20 beyond 30 calendar days to produce a copy of the records, as  
21 long as the agreed-upon date does not exceed 35 calendar  
22 days from the employer's receipt of the written request.  
23 Except as provided in paragraph (2) of subdivision (c), the  
24 employer is not required to make those personnel records or  
25 a copy thereof available at a time when the employee is  
26 actually required to render service to the employer, if the  
27 requester is the employee.

20 94. Labor Code § 2810.5(a)(1) provides

21 At the time of hiring, an employer shall provide to each  
22 employee a written notice, in the language the employer  
23 normally uses to communicate employment-related  
24 information to the employee, containing the following  
25 information: (A) The rate or rates of pay and basis thereof,  
26 whether paid by the hour, shift, day, week, salary, piece,  
27 commission, or otherwise, including any rates for overtime,  
28 as applicable. (B) Allowances, if any, claimed as part of the  
minimum wage, including meal or lodging allowances. (C)  
The regular payday designated by the employer in  
accordance with the requirements of this code. (D) The name

1 of the employer, including any “doing business as” names  
2 used by the employer. (E) The physical address of the  
3 employer's main office or principal place of business, and a  
4 mailing address, if different. (F) The telephone number of the  
5 employer. (G) The name, address, and telephone number of  
6 the employer's workers' compensation insurance carrier. (H)  
7 That an employee: may accrue and use sick leave; has a right  
8 to request and use accrued paid sick leave; may not be  
9 terminated or retaliated against for using or requesting the  
10 use of accrued paid sick leave; and has the right to file a  
11 complaint against an employer who retaliates. (I) Any other  
12 information the Labor Commissioner deems material and  
13 necessary.

14 95. Defendants do not provide timely, accurate, and compliant itemized  
15 wage statements to Plaintiff and putative Class members and keep and furnish  
16 accurate records in accordance with the Labor Code and the IWC Wage Orders. The  
17 wage statements Defendants provide their employees, including Plaintiff and putative  
18 Class members, do not accurately reflect all hours actually worked, actual gross  
19 wages earned, appropriate rates of pay, premiums, actual net wages earned, including  
20 minimum wages and overtime, total hours worked, the number of piece-rate units  
21 earned and any applicable piece rate, all deductions, the inclusive dates of the pay  
22 period, Plaintiff's and putative Class members' name and the last four digits of his or  
23 her social security number or an employee identification number other than a social  
24 security number, the name and address of the legal entity that is the employer and all  
25 applicable hourly rates in effect during the pay period, and the corresponding number  
26 of hours worked at each hourly rate by the employee.

27 96. Defendants are liable to Plaintiff and the putative Class members for the  
28 amounts described above in addition to the civil penalties set forth below, with  
interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and  
costs as set forth below, pursuant to Labor Code § 226(e).

97. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
provided.

**FIFTH CAUSE OF ACTION**

**Violation of California Business and Professions Code §§ 17200 *et seq.*  
(On Behalf of Plaintiff and Putative Class Against All Defendants)**

98. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

99. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

100. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

101. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

102. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 204, 225.5, 558, 1182.12, 1194, 1997, 1197.1, 1198 and IWC Wage Order 4-2001 pertaining to payment of wages, including minimum wage, for all hours worked;
- b. violations of Labor Code § 510 and IWC Wage Order 4-2001 pertaining to overtime; and
- c. violations of Labor Code §§ 226, 226.3 and 226.6 regarding accurate, timely itemized wage statements.

103. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages, serve as unlawful predicate

1 acts and practices for purposes of Business and Professions Code §§ 17200 *et seq.*

2 104. The acts and practices described above constitute unfair, unlawful, and  
3 fraudulent business practices, and unfair competition, within the meaning of Business  
4 and Professions Code §§ 17200 *et seq.* Among other things, the acts and practices  
5 have taken from Plaintiff and the putative Class wages rightfully earned by them,  
6 while enabling Defendants to gain an unfair competitive advantage over law-abiding  
7 employers and competitors.

8 105. Business and Professions Code § 17203 provides that a court may make  
9 such orders or judgments as may be necessary to prevent the use or employment by  
10 any person of any practice which constitutes unfair competition. Injunctive relief is  
11 necessary and appropriate to prevent Defendants from repeating the unlawful, unfair,  
12 and fraudulent business acts and practices alleged above.

13 106. As a direct and proximate result of the aforementioned acts and practices,  
14 Plaintiff and putative Class members have suffered a loss of money and property, in  
15 the form of unpaid wages, which are due and payable.

16 107. Business and Professions Code § 17203 provides that the Court may  
17 restore to any person in interest any money or property which may have been acquired  
18 by means of such unfair competition. Plaintiff and putative Class members are  
19 entitled to restitution pursuant to Business and Professions Code § 17203 for all  
20 wages and payments unlawfully withheld from employees during the four-year  
21 period prior to the filing of this Complaint. Plaintiff's success in this action will  
22 enforce important rights affecting the public interest and, in that regard, Plaintiff sues  
23 on behalf of himself as well as others similarly situated. Plaintiff and putative Class  
24 members seek and are entitled to unpaid wages, declaratory and injunctive relief, and  
25 all other equitable remedies owing to them.

26 108. Plaintiff herein takes upon himself enforcement of these laws and lawful  
27 claims.

28 109. There is a financial burden involved in pursuing this action, the action is

1 seeking to vindicate a public right, and it would be against the interests of justice to  
 2 penalize Plaintiff by forcing him to pay attorneys' fees from any recovery thereof.  
 3 Attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5 and  
 4 otherwise.

5 110. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
 6 provided.

7 **SIXTH CAUSE OF ACTION**  
 8 **Failure to Authorize and Permit and/or Make Available Meal and Rest Periods**  
 9 **Pursuant to Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001**  
 10 **(On Behalf of Plaintiff and the Putative Class against all Defendants)**

11 111. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
 12 fully set forth herein.

13 112. Defendants routinely fail to authorize, permit and/or make available  
 14 compliant, lawful meal periods to Plaintiff and putative Class members.

15 113. Plaintiff's and putative Class members' are routinely denied meal periods  
 16 for the entire thirty minutes because they must spend time waiting for time clocks  
 17 while on meal periods, and Defendants engaged in a practice of automatically  
 18 deducting meal periods and rounding meal period punches and did not provide  
 19 compliant meal and rest periods.

20 114. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require  
 21 Defendants to authorize and permit meal and rest periods to its employees. Labor  
 22 Code §§ 226.7 and 512 and the Wage Orders prohibit employers from employing an  
 23 employee for more than five (5) hours without a meal period of not less than thirty  
 24 minutes, and from employing an employee more than ten (10) hours per day without  
 25 providing the employee with a second meal period of not less than thirty minutes.  
 26 Labor Code § 226.7 provides that no employer shall require an employee to work  
 27 during any rest period mandated by an applicable order of the California IWC. the  
 28 applicable IWC Wage Order provides that "[e]very employer shall authorize and  
 permit all employees to take rest periods, which insofar as practicable shall be in the

1 middle of each work period” and that the “rest period time shall be based on the total  
2 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or  
3 major fraction thereof” unless the total daily work time is less than three and one-half  
4 (3 ½) hours.

5 115. Unless the employee is relieved of all duty during the thirty-minute meal  
6 period, the employee is considered “on duty” and the meal period is counted as time  
7 worked under the applicable Wage Orders.

8 116. Under Labor Code § 226.7(b) and the applicable Wage Orders, an  
9 employer who fails to authorize, permit, and/or make available a required meal and/or  
10 rest period must, as compensation, pay the employee one (1) hour of pay at the  
11 employee’s regular rate of compensation for each workday that the meal and/or rest  
12 period was not authorized and permitted.

13 117. Despite these requirements, Defendants have knowingly and willfully  
14 refused to perform their obligations to authorize and permit and/or make available to  
15 Plaintiff and putative Class members the ability to take the off-duty meal and rest  
16 periods to which they are entitled and engaged in a practice of automatically  
17 deducting meal periods and rounding meal period punches and did not provide  
18 compliant meal and rest periods.

19 118. Defendants have also failed to pay Plaintiff and putative Class members  
20 one (1) hour of pay at the appropriate rate for each day an off-duty meal period was  
21 denied. Furthermore, Defendants failed to pay Plaintiff and putative Class members  
22 one (1) hour of pay at the appropriate rate for each day rest period was denied.  
23 Defendants’ conduct described herein violates Labor Code §§ 226.7 and 512.  
24 Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and putative Class members  
25 are entitled to compensation for the failure to authorize and permit and/or make  
26 available meal and rest periods and automatically deduct meal periods and round  
27 meal period punches and the failure to provide compliant meal and rest periods, plus  
28 interest, attorneys’ fees, expenses and costs of suit.



119. As a proximate result of the aforementioned violations, Plaintiff and putative Class members have been damaged in an amount according to proof at time of trial.

120. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

**SEVENTH CAUSE OF ACTION**  
**Failure to Timely Pay Wages During Employment**  
**Pursuant to Labor Code § 204**  
**(On Behalf of Plaintiff and Putative Class Against All Defendants)**

121. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

122. Labor Code § 204 provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

123. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

124. As a proximate result of the aforementioned violations, Plaintiff and the putative Class have been damaged in an amount according to proof at time of trial.

125. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

**EIGHTH CAUSE OF ACTION**  
**Failure to Timely Pay Wages at Termination/Waiting Time Penalties**  
**Pursuant to Labor Code §§ 201, 202, 203**  
**(On Behalf Of Plaintiff And Putative Class Against All Defendants)**

126. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

127. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

128. Labor Code § 203 provides, in relevant part:



1 if an employer willfully fails to pay, without abatement or  
 2 reduction, in accordance with sections 201, 201.5, 202, and  
 3 205.5, any wages of an employee who is discharged or who  
 4 quits, the wages of the employee shall continue as a penalty  
 5 from the due date thereof at the same rate until paid or until  
 an action therefor is commenced; but the wages shall not  
 continue for more than 30 days.

6 129. Plaintiff and putative Class members have left their employment with  
 7 Defendants during the statutory period, at which time Defendants owed them unpaid  
 8 wages, including overtime, minimum wage, and any premiums at the appropriate rate  
 9 of pay.

10 130. Defendants willfully refuse and continue to refuse to pay Plaintiff and  
 11 putative Class members all the wages that are due and owing them, in the form of,  
 12 *inter alia*, overtime, minimum wage, and premiums upon the end of their  
 13 employment. As a result of Defendants' actions, Plaintiff and the Putative Class have  
 14 suffered and continue to suffer substantial losses, including lost earnings, and  
 15 interest.

16 131. Defendants' willful failure to pay Plaintiff and putative Class members  
 17 the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As  
 18 a result, Defendants are liable to Plaintiff and putative Class members for all penalties  
 19 owing pursuant to Labor Code §§ 201-203.

20 132. In addition, Labor Code § 203 provides that an employee's wages will  
 21 continue as a penalty up to thirty days from the time the wages were due. Therefore,  
 22 Plaintiff and putative Class members are entitled to penalties pursuant to Labor Code  
 23 § 203, plus interest.

24 133. Wherefore, Plaintiff and the putative Class request relief as hereinafter  
 25 provided.

26 **NINTH CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code §§ 2699(a), (f)**  
**(On Behalf of the State of California and Aggrieved Employees)**

27 134. Plaintiff re-alleges and incorporates the foregoing paragraphs as though  
 28

1 fully set forth herein.

2 135. Labor Code § 2699(a) provides:

3 Notwithstanding any other provision of law, any provision  
4 of this code that provides for a civil penalty to be assessed  
5 and collected by the Labor and Workforce Development  
6 Agency or any of its departments, divisions, commissions,  
7 boards, agencies, or employees, for a violation of this code,  
8 may, as an alternative, be recovered through a civil action  
brought by an aggrieved employee on behalf of himself or  
herself and other current or former employees.

9 136. Labor Code §§ 201 and 202 require employers to immediately pay wages  
10 earned and unpaid to an employee that is discharged, and to pay an employee who  
11 quits within 72 hours after he or she quits, at the latest.

12 137. Labor Code § 203 provides, in relevant part:

13 If an employer willfully fails to pay, without abatement or  
14 reduction, in accordance with Sections 201, 201.5, 202, and  
15 205.5, any wages of an employee who is discharged or who  
16 quits, the wages of the employees shall continue as a penalty  
17 from the due date thereof at the same rate paid or until an  
action therefor is commenced; but the wages shall not  
continue for more than 30 days.

18 138. Labor Code § 256 provides: “The Labor Commissioner shall impose a  
19 civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms  
20 of Section 203.”

21 139. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each  
22 failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and  
23 the Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts  
24 established by Labor Code § 203.

25 140. Labor Code § 226(a) provides:

26 Every employer shall, semimonthly or at the time of each  
27 payment of wages, furnish each of his or her employees,  
28 either as a detachable part of the check, draft, or voucher  
paying the employee's wages, or separately when wages are

1 paid by personal check or cash, an accurate itemized  
 2 statement in writing showing (1) gross wages earned, (2)  
 3 total hours worked by the employee, except for any  
 4 employee whose compensation is solely based on a salary  
 5 and who is exempt from payment of overtime under  
 6 subdivision (a) of Section 515 or any applicable order of the  
 7 Industrial Welfare Commission, (3) the number of piece-rate  
 8 units earned and any applicable piece rate if the employee is  
 9 paid on a piece-rate basis, (4) all deductions, provided that  
 10 all deductions made on written orders of the employee may  
 11 be aggregated and shown as one item, (5) net wages earned,  
 12 (6) the inclusive dates of the period for which the employee  
 13 is paid, (7) the name of the employee and his or her social  
 14 security number, (8) the name and address of the legal entity  
 15 that is the employer, and (9) all applicable hourly rates in  
 16 effect during the pay period and the corresponding number  
 17 of hours worked at each hourly rate by the employee.

18 141. Labor Code § 226(e)(1) provides, in relevant part:

19 An employee suffering injury as a result of a knowing and  
 20 intentional failure by an employer to comply with  
 21 subdivision (a) is entitled to recover the greater of all actual  
 22 damages or fifty dollars (\$50) for the initial pay period in  
 23 which a violation occurs and one hundred dollars (\$100) per  
 24 employee for each violation in a subsequent pay period, not  
 25 to exceed an aggregate penalty of four thousand dollars  
 26 (\$4,000), and is entitled to an award of costs and reasonable  
 27 attorney's fees.

28 142. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226  
 shall be subject to a civil penalty in the amount of two  
 hundred fifty dollars (\$250) per employee per violation in an  
 initial citation and one thousand dollars (\$1,000) per  
 employee for each violation in a subsequent citation, for  
 which the employer fails to provide the employee a wage  
 deduction statement or fails to keep the records required in  
 subdivision (a) of Section 226. The civil penalties provided  
 for in this section are in addition to any other penalty  
 provided by law.

143. Labor Code § 226.6 provides:

Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law.

144. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1), as prayed for herein.

145. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

146. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

147. Labor Code § 204(a) provides that “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month....”

148. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

1        149. Labor Code § 1198 makes it unlawful for employers to employ  
2 employees under conditions that violate the Wage Order.

3        150. Labor Code § 225.5 provides:

4  
5            In addition to, and entirely independent and apart from, any  
6 other penalty provided in this article, every person who  
7 unlawfully withholds wages due any employee in violation  
8 of Section 212, 216, 221, 222, or 223 shall be subject to a  
9 civil penalty as follows:

10           (a) For any initial violation, one hundred dollars (\$100) for  
11 each failure to pay each employee.

12           (b) For each subsequent violation, or any willful or  
13 intentional violation, two hundred dollars (\$200) for each  
14 failure to pay each employee, plus 25 percent of the amount  
15 unlawfully withheld.

16           The penalty shall be recovered by the Labor Commissioner  
17 as part of a hearing held to recover unpaid wages and  
18 penalties or in an independent civil action. The action shall  
19 be brought in the name of the people of the State of  
20 California and the Labor Commissioner and attorneys  
21 thereof may proceed and act for and on behalf of the people  
22 in bringing the action. Twelve and one-half percent of the  
23 penalty recovered shall be paid into a fund within the Labor  
24 and Workforce Development Agency dedicated to educating  
25 employers about state labor laws, and the remainder shall be  
26 paid into the State Treasury to the credit of the General Fund.

27        151. Labor Code § 432 provides that “[i]f an employee or applicant signs  
28 any instrument relating to the obtaining or holding of employment, he shall be  
given a copy of the instrument upon request.”

1        152. Labor Code § 510 provides, in relevant part:

2            Eight hours of labor constitutes a day’s work. Any work in  
3 excess of eight hours in one workday and any work in excess  
4 of 40 hours in any one workweek and the first eight hours  
5 worked on the seventh day of work in any one workweek  
6 shall be compensated at the rate of no less than one and one-  
7 half times the regular rate of pay for an employee. Any work

1 in excess of 12 hours in one day shall be compensated at the  
2 rate of no less than twice the regular rate of pay for an  
3 employee. In addition, any work in excess of eight hours on  
4 any seventh day of a workweek shall be compensated at the  
5 rate of no less than twice the regular rate of pay of an  
6 employee. Nothing in this section requires an employer to  
combine more than one rate of overtime compensation in  
order to calculate the amount to be paid to an employee for  
any hour of overtime work.

7 153. Labor Code § 558 provides, in relevant part:

8 (a) Any employer or other person acting on behalf of an  
9 employer who violates, or causes to be violated, a section of  
10 this chapter or any provision regulating hours and days of  
work in any order of the Industrial Welfare Commission  
shall be subject to a civil penalty as follows:

11 (1) For any initial violation, fifty dollars (\$50) for each  
12 underpaid employee for each pay period for which the  
13 employee was underpaid in addition to an amount sufficient  
to recover underpaid wages.

14 (2) For each subsequent violation, one hundred dollars  
15 (\$100) for each underpaid employee for each pay period for  
16 which the employee was underpaid in addition to an amount  
sufficient to recover underpaid wages.

17 (3) Wages recovered pursuant to this section shall be paid to  
the affected employee.

18 154. Labor Code § 1174(d) provides that employers shall

19 Keep, at a central location in the state or at the plants or  
20 establishments at which employees are employed, payroll  
21 records showing the hours worked daily by and the wages  
22 paid to, and the number of piece-rate units earned by and any  
23 applicable piece rate paid to, employees employed at the  
24 respective plants or establishments. These records shall be  
25 kept in accordance with rules established for this purpose by  
the commission, but in any case shall be kept on file for not  
less than three years. An employer shall not prohibit an  
employee from maintaining a personal record of hours  
worked, or, if paid on a piece-rate basis, piece-rate units  
earned.

26 155. Labor Code § 1182.12 provides, in relevant part:  
27  
28



(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

(C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars (\$12) per hour.

(D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(3) For purposes of this subdivision, “employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, “employer” includes the state, political subdivisions of the state, and municipalities.

156. Labor Code § 1197 provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not



change the applicability of local minimum wage laws to any entity.

157. Labor Code § 1197.1 provides, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

158. Labor Code § 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

159. Labor Code § 1198.5(b)(1) provides

The employer shall make the contents of those personnel

records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

160. Labor Code § 2810.5(a)(1) provides

At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information: (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. (C) The regular payday designated by the employer in accordance with the requirements of this code. (D) The name of the employer, including any "doing business as" names used by the employer. (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different. (F) The telephone number of the employer. (G) The name, address, and telephone number of the employer's workers' compensation insurance carrier. (H)

1 That an employee: may accrue and use sick leave; has a right  
 2 to request and use accrued paid sick leave; may not be  
 3 terminated or retaliated against for using or requesting the  
 4 use of accrued paid sick leave; and has the right to file a  
 5 complaint against an employer who retaliates. (I) Any other  
 information the Labor Commissioner deems material and  
 necessary.

6 161. Labor Code §§ 226.7 and 512 and IWC Wage Order 1-2001 and 7-2001  
 7 require Defendants to authorize, permit, and/or make available timely and compliant  
 8 meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and IWC Wage  
 9 Order 1-2001 prohibit employers from employing an employee for more than five  
 10 hours without a meal period of not less than thirty minutes, and from employing an  
 11 employee more than ten hours per day without providing the employee with a second  
 12 meal period of not less than thirty minutes. Unless the employee is relieved of all  
 13 duty during the thirty-minute meal period and ten-minute rest period, the employee  
 14 is considered “on duty” and the meal period is counted as time worked under the  
 15 applicable wage orders.

16 162. To the extent than any violation alleged herein does not carry penalties  
 17 under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code  
 18 § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she  
 19 was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks  
 20 penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees  
 21 for violations of Labor Code provisions including, but not limited, to, Labor Code  
 22 §§ 226, 226.7, 510, 512, 1194, 1174, 1198.5, 2810.5, 201-203, 204, 226, and IWC  
 23 Wage Orders 1-2001, and any other violation alleged herein does not carry penalties  
 24 under Labor Code § 2699(a) for failing to pay Plaintiff and Aggrieved Employees  
 25 for all hours worked, minimum wage, overtime, pay at the appropriate rates, and  
 26 premiums; failing to provide complaint meal and rest breaks, properly tracking  
 27 meal breaks, rounding meal periods, and automatically deducting meal periods;  
 28 failing to keep, furnish, and timely provide accurate personnel, pay, and time

1 records; and failing to timely pay all wages owed during employment and following  
 2 separation of employment. Moreover, Plaintiff and Aggrieved Employees are  
 3 provided with untrue, non-compliant, improperly maintained, untimely, and  
 4 inaccurate wage statements as such statements do not include payment for all hours  
 5 worked, including appropriate rates of pay, minimum wages, and overtime, and do  
 6 not accurately reflect gross wages earned, total hours worked, the number of piece-  
 7 rate units earned and any applicable piece rate, all deductions, net wages earned, the  
 8 inclusive dates of the pay period, Plaintiff's and Aggrieved Employees' names and  
 9 only the last four digits of their social security number or an employee  
 10 identification number other than a social security number, the name and address of  
 11 the legal entity that is the employer, and all applicable hourly rates in effect during  
 12 the pay period and the corresponding number of hours worked at each hourly rate  
 13 by the employee.

14 163. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the  
 15 Labor and Workforce Development Agency ("LWDA") with notice of his intention  
 16 to file this claim. Sixty-five calendar days have passed without notice from the  
 17 LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil  
 18 action in compliance with § 2699.3(a).

19 164. Plaintiff seeks the aforementioned penalties on behalf of the State, other  
 20 Aggrieved Employees, and himself as set forth in Labor Code § 2699.

21 165. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of  
 22 California for the civil penalties set forth in this Complaint, with interest thereon.  
 23 Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

24 166. Wherefore, Plaintiff requests relief as hereinafter provided.

### 26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief as follows:

- a. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
- b. For a declaratory judgment that Defendants have violated the California Labor Code, California law, and public policy as alleged herein;
- c. For a declaratory judgment that Defendants have violated California Business and Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code;
- d. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, their officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;
- e. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- f. For an order awarding Plaintiff and putative Class members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, treble damages, punitive damages, and all other sums of money owed to Plaintiff and putative Class members, together with interest on these amounts, according to proof;
- g. For an award of reasonable attorneys' fees as provided by the California Labor Code, including California Code of Civil Procedure § 1021.5 and/or other applicable law;
- h. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA, California Labor Code § 2698 *et seq.*
- i. For all costs of suit;
- j. For interest as provided by applicable law; and

1 k. For such other and further relief as this Court deems just and proper.

2  
3 Dated: August 14, 2023

Respectfully submitted,

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8  
9 Carolyn H. Cottrell

10 Caroline N. Cohen

11 Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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13 *Attorneys for Plaintiff and the Putative Class*  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Dated: August 14, 2023

Respectfully submitted,



Carolyn H. Cottrell

Caroline N. Cohen

Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

*Attorneys for Plaintiff and the Putative Class*